IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 12084 OF 1994

For Approval and Signature:

THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HARIJAN PUNJA MANGA &ANR.

Versus

COLLECTOR &ORS.

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Appearance :

MR. S.V. PARMAR for Petitioner No(s). 1 &2

MR. I.M. PANDYA, AGP for Respondent No(s). 1 &2

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CORAM :THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/06/2005

ORAL JUDGMENT

1. Heard Mr.S.V.Parmar, learned Advocate appearing for the petitioners.

2. Heard Mr. I. M. Pandya, learned Assistant Government Pleader, appearing for respondents. Mr.Pandya is not able to render any assistance to the Court. He submitted that as he is appearing for the respondents, he is not ready with the matter. However, he read the list of events, contents of Annexures and some paragraphs of the memo of the petition. Mr.Pandya is an Assistant Government Pleader for quite some time and it is expected of him to be ready with the matter and render necessary assistance to the Court.

3. The present petition is filed for the following reliefs:
“(a) issue writ of mandamus or any other appropriate writ, order or direction, directing the respondents to hold land kacheri and allot the land specified in the Sheet Ann. `G' and other land i.e. waste land that can be allotted to the Scheduled Caste and Backward Classes for agriculture;”

(b) quash and set aside Mamlatdar's order dtd. 11.5.92; Ann.`F-2';

(c) issue writ of mandamus or any other writ, order or direction, directing the respondents to review the decision communicated to the petitioners under the Mamlatdar's order dtd. 11.5.92 in view of the fact that the said land was already allotted to Karamshi Jivraj for the said purpose;

The petitioners have also prayed for the interim relief, as set out in paragraph-9, which reads as under:

“Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to restrain the respondents from taking possession of 6 acres of land of Survey No.172 Paiki of village Keshod which the petitioners have put under cultivation.”

4. The facts, as set out in the petition, are that the petitioners, who are belonging to the community, popularly known as `Harijan' community and specified by the President of India as Scheduled Caste, were allotted waste land of Village Miti-Amipur of Taluka :Kutiyana by Order dated 31st December, 1966. It is required to be noted that by the said order, there was allotment of land admeasuring 3 hectares, 64 Are and 12 sq. mtrs. of Survey No.242 paiki, of Village Amipur-Miti in favour of petitioner no.1 only. There was no allotment in favour of petitioner no.2, that is, Hamir Manga Harijan. As stated in paragraph no.3.3, the case of petitioner no.1 is that

after he was allotted the land, he continued in possession till the same was acquired by the Special Land Acquisition Officer for Amipur Irrigation Project in the year 1982. However, the document produced at Annexure-C depicts that the land was acquired by Award No.12/78 dated 6 th February, 1979.

5. The petitioners have next submitted that the Deputy Collector, Veraval, by his order dated 29th August, 1972, had allotted the lands of Survey No.172 of Village Keshod, admeasuring 2 Acres, 42 Gunthas and 82 sq. mtrs. to one Shri Patel Karamshi Jivraj for planting fruit trees, but then, the said Shri Karamshi Jivraj Patel, after taking possession of the lands, failed to plant and raise the trees and, therefore, the allotment was cancelled for breach of conditions annexed to the allotment order. The petitioners have neither produced copy of the allotment order nor of cancellation.

6. The petitioners have produced a copy of Village Form No.7/12 to support the aforesaid submissions. In the said document, the name of Karamshi Jivraj is mentioned *vide* Entry No.2739. Thereafter, by Entry No.3898, the name of the Government is mentioned. It is further stated in the column meant for mentioning the name of the tenant that “on account of breach of conditions, name is deleted and the possession is taken by the Government *vide* Entry No.3730”, while in the column of `other rights', it is mentioned that by Order of the Deputy Collector, Veraval - Lands, dated 29thAugust, 1972, for cultivation of fruit trees, the land is given on lease for 30 years.

7. Taking a clue and an inspiration from the aforesaid fact, the petitioners made an application to the Collector and the Mamlatdar for allotment of the said very land admeasuring 2 hectares, 42 Are and 82 sq. mtrs. of Survey No.172 of Village Keshod for raising of fruit trees. Thereafter, Mamlatdar and Talati-cum-Mantri processed the papers for allotment in response to an application made by Shri Rameshbhai Punjabhai i.e. Son of Punjabhai Mangabhai (petitioner no.1 herein). After calling upon the petitioners to appear before them and after recording the reply of the petitioners, the Mamlatdar, by Order dated 11th May, 1992, rejected the petitioners' application, which has given rise to the present petition.

8. The petition is based on the policy of the Government set out in Government Resolution No.LND.3960-AI dated 1st March, 1960 (Annexure-A) whereby according to the petitioners, the Government has decided to dispose of the waste land of the Government. It is also contended by

the petitioners that the petitioners have approached repeatedly to the Mamlatdar and the Collector for holding the land kacheri, but then, the authorities did not take any action and, therefore, the petitioners are constrained to file this petition before this Court and has sought for the relief set out in paragraph-8(a).

9. The second relief sought for by the petitioners is to quash and set aside the order of the Mamlatdar dated 11th May, 1992, a copy of which is produced at Annexure F-2. By the aforesaid order, the Mamlatdar, Keshod Taluka has rejected the application of the petitioners.

10. The petitioners have next prayed that the authorities be directed to review the decision communicated to the petitioners *vide* the aforesaid order of the Mamlatdar dated 11th May, 1992 keeping in view the fact that the said land was already allotted to one Shri Karamshi Jivraj for the very same purpose - for cultivating of fruit trees.

11. Besides the aforesaid substantial reliefs, the petitioners have prayed for an order of injunction restraining the respondents from taking possession of 6 Acres of land of Survey No.172 Paiki of Village-Keshod, which according to the petitioners, they have put under cultivation. The petitioners have stated in Ground No.4.2 that,

"..... Since the officers had not taken any action, the petitioner entered on the land and have made it cultivable. In fact, the policy of allotment of land for raising of trees permits such action. The Government has followed the policy of regularisation of encroachment made by Scheduled Caste and Backward Classes. Hence the discretion of the Revenue Officer for allotment of land takes the form of duty to make equitable orders. Therefore, the respondents' decision communicated under Order F2 - is violative of petitioner's right to equality enshrined under Article 14 of the Constitution of India."

12. So far as the relief sought for in paragraph-8(a) is concerned, the Government has set out a policy in G.R.No.LND.3960-AI dated 1stMarch, 1960 and accordingly, the authorities ought to have held land kacheri and should have disposed of the land available for the purpose. Despite the fact that the petition was filed on 21stOctober, 1994 and the Court had issued Notice on 27th October, 1994 and `Rule' on 2nd February, 1995, till date the respondent-Authorities have not filed any affidavit controverting the averments made in the petition. Hence, it is deemed fit to grant the relief, as sought for in paragraph-8(a). The authorities are directed to hold the land kacheri in accordance with law and implement the policy of the Government. In view of the fact that the

matter is old enough, it is further deemed fit to direct the authorities to hold the land kacheri within three months from the date of receipt of this order and implement the policy of the Government on the subject.

13. So far as the relief for quashing of the order of the Mamlatdar, Keshod dated 11th May, 1992 is concerned, on the face of it, the order is passed without being mindful of the fact that the very land of Survey No.172 of Village-Keshod was allotted to one Patel Karamshi Jivraj by an order dated 29th August, 1972 for a period of 30 years for cultivating fruit trees, as is mentioned in Village Form No.7/12 (Annexure-D). In view of that, Order dated 11th May, 1992 is quashed and set aside and the authorities are directed to pass a fresh reasoned order within three months from the date of receipt of this order.

14. So far as the relief for protecting the possession of the petitioners of the land in question, as prayed for by way of interim relief in paragraph-9 of the petition, is concerned, in the considered opinion of this Court, the same does not deserve to be granted. However, in view of the fact that this Court, while issuing notice on 27thOctober, 1994, granted protection of the possession of the petitioners by granting *ad interim* relief by directing the parties to maintain `*status quo'* and in view of the statement made by the learned Advocate for the petitioners, Mr.S.V.Parmar, that till date, the petitioners are in possession of the land in question, the parties are directed to continue to maintain `*status quo'*of the subject land for a period of next three months from the date of receipt of communication of the order, if the same is adverse to the petitioners.

15. It is a sorry state of affairs that though `Rule' was issued by this Court on 2nd February, 1995 and an order of `*status quo*' was granted in favour of the petitioners, the respondent-Authorities have not taken care of filing an affidavit-in-reply in the petition.

16. As stated herein above, the learned AGP, Mr.I.M.Pandya, submitted that as he is appearing for the respondents, he is not ready with the matter. This is how the Government's matters are conducted and interest of the Government is protected by the learned Assistant Government Pleader.

17. In the result, the petition is allowed. Rule is made absolute in the aforesaid terms. Interim relief granted earlier is to operate as directed herein above. No order as to costs.

Office is directed to send a copy of this order to the Legal Department for necessary action.

(***Ravi R.Tripathi, J.)***
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